



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mission Hills Apts.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDS

This hearing was convened on the tenants' application of December 4, 2012 seeking a Monetary Order for return of their security deposit in double on the grounds that it was retained without consent or without the landlord having made application for dispute resolution to claim against it.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for return of their security deposit and should the amount be doubled?

Background and Evidence

This tenancy began on October 1, 1992 and ended on October 31, 2012. Rent was \$565 and the landlord holds a security deposit of \$269.20 paid on or about October 1, 1992.

During the hearing, the landlord concurred that she had not returned the security deposit because the amount due had been exceeded by the cost of carpet cleaning and general cleaning.

The landlord also confirmed that the parties had conducted the move-out condition inspection report and that the tenants had provided their forwarding address at the end of the tenancy.

The landlord conceded that she was not aware of the statutory requirement to return the security deposit or make application for dispute resolution to claim against if the tenants did not consent to it being retained.

Analysis

A security deposit is a payment made in trust to a landlord and may only be accessed by the landlord with consent of the tenants or by an order of the director's delegate resulting from a dispute resolution proceeding.

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return security and pet damage deposits or file for dispute resolution to make claim against them unless the tenant has agreed otherwise in writing as per section 38(4) of the *Act*.

Section 38(6) of the *Act* states that, if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the deposits.

In the present matter, I find that landlord breached section 38(1) of the *Act* by failing to return the deposit or make application to claim against it within 15 days of the end of the tenancy and receipt of the tenants' forwarding address and must return the deposit in double.

Therefore, I find that the tenants are entitled to a Monetary Order calculated as follows:

Security deposit	\$269.20
Interest on bare deposit (October 1, 1992 to date)	70.91
To double the security deposit as per s. 38(6) of the <i>Act</i>	269.20
TOTAL	\$609.31

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$609.31**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 05, 2013

Residential Tenancy Branch

